IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7080 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KUMAR MOHANDAS AHUJA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

Mr.Premal Joshi, Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 11/02/2000

ORAL JUDGEMENT

The detenu has filed this petition under Article 226 of the Constitution of India as he has been detained by the respondent no.2 under the provisions contained in the Gujarat Prevention of Anti-Social Activities Act (for short `PASA'). The order was passed on 15.6.99.

2. The detenu was supplied with the grounds of detention dated 15.6.99 annexed to the petition at Annexure B. Reading the same, it appears that the petitioner is a dangerous person. 2 cases are registered. In one case he was chargesheeted for offences punishable under Section 143, 147, 148, 149, 326, 307 of the Indian Penal Code and also under the offence punishable under Section 135(1) of the Bombay Police Act for an incident which took place on or about 25.5.99 under the jurisdiction of Vatva Police Station. Even prior thereto, the detenu was found engaged in similar activities for which offences were registered at Maninagar Police Station on 26.2.99 under Section 341, 324, 294B, 323, 114 of the Indian Penal Code and also under the offence punishable under Section 135(1) of the Bombay Police Act, which case is pending in the Court.

3. From the grounds of detention, it appears that on account of the activities of the detenu, the residents of the locality and the passers were apprehending danger. With use of weapon, the detenu used to take out money from the pocket of persons and used to beat innocent persons. In view of the atrocities committed by the detenu, the Detaining Authority thought it fit to detain the detenu.

4. In the instant case, the affidavit in reply has not been filed by the Detaining Authority or the State Government. The detenu has stated as under in ground j:-

"j. The petitioner submits that the mother of the petitioner has made a representation dated 7.9.99 to the Hon'ble Governor of State of Gujarat by registered post a.d. It is submitted that the same has been received by the Hon'ble Governor. It is further submitted that Hon'ble Governor is competent to decide the representation under the rules of Business made on behalf of the petitioner. Annexed hereto and marked as Annexure C is a copy of the representation dated 7.9.1999.

It is submitted that the State Government has to satisfy this Hon'ble Court as to how they have dealt with the representation made on behalf of the petitioner. If the representation is not considered at all then it would amount to non consideration of the representation and in case the representation is

> considered after undue delay then it would amount to delay in considering the representation. In both the circumstances, the continued detention becomes bad in law. Therefore, the State Government has to satisfy this Honourable Court that the representation of the petitioner has been considered as expeditiously as possible and without any undue delay. In failing to do so, the continued detention of the petitioner becomes bad in law."

Thus, the contention raised before the Court is that the representation made by the detenu has not been disposed of by the State Government in accordance with law and therefore the continued detention is bad and illegal. In view of no reply filed by the State Government there is no material on the record controverting the averments made in the application and particularly, in ground (j) mentioned hereinabove. It is under this circumstances, it is required to be held that the continued detention of the detenu is bad and illegal and the petitioner is required to be released forthwith unless not required in any other case.

5. Accordingly, the petition is allowed. The detenu is ordered to be released forthwith. Rule made absolute. No order as to costs.

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